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MASSACHUSETTS CLAIM



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REPORT

OF THE

HON. JOHN DAVIS,

Agent for the Prosecution of the

CLAIM OF MASSACHUSETTS

UPON THE

UNITED STATES,

FOR

MILITIA SERVICES DURING THE LAST WAR

TO

HIS EXCELLENCY LEVI LINCOLN,

GOVERNOR OF THE COMMONWEALTH,

*Referred to in the Governor's Speech, and transmitted
by him to the Legislature, by Special Message,*

MAY 30, 1831.

Boston:

DUTTON AND WENTWORTH, PRINTERS TO THE STATE.

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1831.

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SENATE.....No. 2.

WORCESTER, APRIL 2d, 1831.

SIR,

In my letter of the 20th of November last, I gave you an account of my proceedings as the Agent of Massachusetts in settling her Claim upon the United States, for disbursements, during the late war, and at the same time communicated to you the correspondence, which had then taken place between me and the Secretary of War. I will now invite your attention to subsequent transactions. I left this place in the latter part of December for Washington, having previously requested the Secretary to inform me if my personal attention to the business would hasten its termination, and assured him, if such was the case, that I would at once repair to that city. I found on my arrival that no delay had been occasioned by my absence.

In order that the correspondence and documents to which I shall refer your Excellency may be understood, I will again state the condition of the claim, when it was taken up by me, as the agent of the Commonwealth, and the question which was pending between me and the Secretary of War, when I made my report in November last.

Before the passage of the act of Congress of May, 1830, which provided for the adjustment of the demand, the House of Representatives, by a resolution, had directed

the then Secretary of War, Mr. Barbour, to cause it to be examined for the purpose of ascertaining what was due, and in compliance with that resolution, the account with the vouchers were committed to the Third Auditor for that purpose. The whole underwent a rigid ex parte examination, and his report to the Secretary was made in 1828, and laid before the House of Representatives without a re-examination or any alteration.

In this report the expenditures of the State were arranged under the following heads. 1. "*Guards*," which embrace the charges for such troops as were detached to watch the approach of danger and to transmit intelligence thereof. 2. "*Alarms*," or disbursement for troops who were called out on sudden emergencies to repel actual or threatened invasion, where the circumstances did not allow of delay. These troops were detached by orders which reposed discretionary authority in the commanders of Divisions for that purpose. 3. "*Executive Calls*," or the charges for troops taken into the service by order of the Governor, upon the representation of the inhabitants of the dangers to which they were exposed by an armed force upon the coast. Under these heads, nearly the whole claim is arranged, but there are several subordinate classes, which there is no occasion to enumerate.

So much of the report as presents a general analysis was printed by order of the House of Representatives in 1828, from which it appears, that the Auditor proceeded in his examination without reference to the controversy between the two governments, professing to allow or reject items on the same principles which had been applied to the settlement of like claims from other States. The whole amount demanded is \$,

and the amount allowed is \$430,748 26. The principal items of charge are the pay of troops, their clothing, the use of arms, rations, hospital expenses, fortifications, hulks sunk or prepared to be sunk for the defence of harbors, barracks, transportation, &c. &c. The deductions, which constitute nearly one half, are arranged under several heads. 1. *Clothing*, which is said to be inadmissible, because allowances of that kind have not been made to the militia of any State. 2. *Use of arms*, for which the State allowed to each soldier fifty cents a month, is declared to be inadmissible for the same reason. 3. *Overpayments for rations*. The State allowed 20 and 25 cents for each ration, while the Auditor allowed but 17 cents, on the ground that the United States had a contract in this Military District to furnish all rations at that rate. On an early representation, however, to the President, Mr. Monroe, that the contractor could not supply them, he agreed that they should be estimated at 17 cents, and the balance should stand for further consideration. 4. *Overpayments*. The State, in making up the daily pay of the troops, averaged it upon 30 days for a month. The United States adopted a different rule, by averaging it upon the actual number of days in the month when the service was rendered. For example, the pay of a colonel is \$70 a month, and his daily pay, at this rate, in a month of 28 days, would be \$2,50; in a month of 30 days, \$2,33; and in a month of 31 days, \$2,25 $\frac{1}{2}$. The application of this rule caused considerable deduction. 5. *Excess of rations*. The Auditor alleges that in some instances a greater number of rations are charged than the troops were entitled to, and in others, that officers drew a greater number than their rank justified. The excess

is disallowed. 6. *Payments by the State for Servants.* These items are in all instances disallowed, where the servants do not appear by the rolls to have been regularly mustered. 7. *Forage.* It is, perhaps in most instances, rejected, because the officers have not certified according to the army regulations, that the horses were actually employed in the service. 8. Many of the charges for *fuel* and *rooms*, instead of barracks, are deducted, because the evidence which supports them is informal or unsatisfactory. 9. *Fortifications.* All charges for the erection of fortifications and batteries are alleged to be inadmissible, on the ground that such expenses are never allowed. Other objections are made to many of the expenditures which appear at large in certain manuscript documents of the Auditor called "Rough Notes," but there is no occasion to enter more into detail. In all cases where the evidence in support of the charges was considered informal or insufficient, the charges are suspended for further proofs and explanations, but where they are such as had not been allowed to other States, they were noted as inadmissible. There are charges, also, to a large amount, which, by the established usage of the Department, fall within the discretion of the Secretary to allow or reject, as he thinks proper, upon a view of all the circumstances. Such charges were left by the Auditor for the decision of the Secretary, but Mr. Barbour made none, and none has since been made; so they stand at present as rejected.

From all this, it is obvious that the sum allowed consists of monthly pay, fuel, forage, hospital expenses, servants, travel, rations, &c., embracing nearly every kind of expenditure, which has, under the usage of the government, been allowed to militia in the public ser-

vice; and that the greater part of the sum disallowed consists of similar charges, which either require further proof or explanation, or await the decision of the Secretary where they depend on his discretion.

When the business was intrusted to my care, as agent of the Commonwealth, I found the claim in this condition. I considered the adjustment, as it stood in the report, as substantially ex parte, for if I am rightly informed, the State had no one present at that time to furnish additional evidence, or to afford any explanations. I need not inform your Excellency, that in such examinations a most scrupulous regard to the interests of the United States, is observed, all items being rejected which are not sustained by proofs which agree in *form* as well as *substance* with the rules of the Department. This is but the natural result of a debtor's holding power to settle with his creditor according to his own pleasure.

Under these circumstances, as you are apprised, a proposition was made soon after the passage of the law of 1830, to the Secretary of War, to pay to the State the balance found due by the report of the auditor, amounting to \$430,748,26. He was invited to take this course because it was believed the provisions of the act of Congress, were broad enough to cover this entire sum, and as advances had been made to other States, while their demands were in a course of settlement, it seemed to be manifestly unjust to withhold this sum from Massachusetts, until a final and complete adjustment should take place. The first question which arose upon this proposition, was, whether any further auditing was necessary as to that sum, and the Secretary early came to the conclusion that it was not. The next question was,

whether the terms of the act were broad enough to cover this sum, being made up, as it was, of the services and expenditures of every corps of troops called out by the authority of the State during the war.

This question, as you are aware, was agitated during my residence at Washington, in the month of October and November last, and was left undecided. The discussion was resumed on my return in December, following, and continued from time to time, until the 20th of January, 1831, when I received a note from the Secretary covering his decision, made then as you will perceive in a confidential manner, but which, by subsequent transactions has necessarily become public. Both documents are hereunto annexed and marked (A). In reference to the authority conferred on him by the Act of Congress, about which the Secretary seemed at one time to entertain doubts; he observes in making his decision. "In discharging the trust given to me under this act, I have not felt myself called upon to consider the claim in reference to the objections which were originally made, but simply to determine under the provisions of the act, if at the time these claims arose, and when the militia were called out, there was 'an actual invasion or well founded apprehension of invasion,' and also whether 'the numbers were in undue proportion to the exigency.' To determine these is all I feel myself called upon or required to do." I ought here to observe, that he was not only solicited to make this payment upon the strength of the Auditor's report, but when that was done to proceed to a re-examination of the suspended items.

In coming to a decision upon the above principles, the Secretary as you will perceive rejected all the disburs-

ments accruing under the denomination of "*Executive Calls,*" between the 14th of June and the 4th of Sept. 1814, amounting as is believed, to about \$50,000. Not being satisfied with the reasons assigned for this deduction, I had an interview with him on the 25th of January. His objections are set forth in his decision, and not entirely on the ground that there were troops enough in the service to meet the exigencies of that period. Exclusive of those rejected, and therefore, in the terms of the Act "the numbers [out] were in undue proportion to the exigency." To remove this objection, I proceeded to make him acquainted with the actual state and condition of Massachusetts and Maine during that period.

1. I invited his attention to the geography of these two States, as exhibited by the maps shewing a maritime frontier of nearly or quite 600 miles which was not, and could not be defended, except by a marine force strong enough to hold possession of our waters.—I drew his attention to the fact, that this great extent of Coast is indented and intersected with large rivers, broad, deep and secure bays, inlets and harbours, affording a safe and easy navigation to large ships, and also to the fact, that the shores in most places are bold, and in Maine especially, covered by a vast number of Islands, thinly inhabited and wholly unprotected. I contended that these facilities, enabled the enemy to penetrate with safety into an undefended country, unless he was restrained by armed and organized troops. I pointed out the convenience offered by the Coast to an enemy in possession of the waters, showing that a squadron could maintain itself in all weathers South of Cape Cod, by finding secure anchorage and watering places in the Vineyard Sound and among the Elizabeth Islands—that

another could with like safety cruise in Massachusetts Bay, finding good and secure anchorage at all times in the harbour of Cape Cod, where there is no population capable of disturbing an enemy, that a third could maintain itself on the Coast of Maine, where the numerous undefended harbours and Islands afford every convenience in all kinds of weather.

2. I pointed out the full extent of measures which had been taken to defend this extensive frontier, no part of which could be said to be fortified except Boston Harbor. There were batteries at the entrance of some of the principal ports, erected for the purpose of enforcing the revenue laws, but some were without men, others too feebly manned to make any resistance, and others decayed and deserted. In proof of these facts, I adduced the letter of Gen. King and others who were acquainted with the condition of these batteries, and whose declarations fully bear out the statements made by me.

3. After having shewn the extent and condition of our Coast, I proceeded to prove, what is now, matter of history, familiar to all of us, who personally knew what passed during that period, to wit, that the whole range of frontier was rigorously blockaded—that the ships of the enemy were filled with an extra number of men, and provided with barges and tenders to prosecute a marauding warfare—that one of his squadrons cruised South of Cape Cod, another in Massachusetts Bay, and a third on the Coast of Maine, that the number of ships in that service, as nearly as I could ascertain from a careful examination of the Marine lists of the day, were about six 74s and eight Frigates, with a proper proportion of Sloops of war and smaller vessels. I contended that this powerful armament could be speedily concentrated

at any given point, or if desirable united with the ships at the naval depot at Halifax, where it would have been irresistible in its operations ; that all this was seen by the government of Massachusetts, and common prudence required that measures should be taken to guard against the danger.

4. I next adduced evidence to prove that news from the most credible sources had reached Massachusetts in the month of June, that large armaments were fitting out in England for our coast, in addition to the above, whose destination was unknown, and therefore apprehensions were excited throughout the country, and more especially in places which, like Massachusetts, had no resources of defence to rely on except the Militia.

5. I contended that none but a regular organized force could be safely relied on to repel marine descents, for they were ordinarily sudden and unexpected ; that the movements of such a force are so rapid and deceptive as to leave no time for repose ; that what is apparently abandoned in the morning, may be attacked in the evening ; that we were apprized, from the declarations and conduct of the enemy, that a principal object was to destroy our shipping, which was then very great and principally in port ; that in June and July he actually entered Wareham, Gloucester, Cohasset, Saco and other places, burning and cutting out vessels and destroying other property. I urged that a single 74 could fit out a force of 400 or 500 men to enter our harbors for these marauding purposes, and that none but troops embodied and organized could successfully repel such assaults, for the work of desolation would be over before the unembodied Militia could be collected at a rendezvous. In support of this reasoning, I

quoted the opinion of that distinguished and experienced officer Commodore Bainbridge, who in speaking of Boston at that period, in a letter to the late Governor Brooks, says, the work of destruction would be accomplished by the enemy before the Militia could be collected to repel him. Hence I inferred that the Secretary was erroneous in his opinion that the local and unembodied Militia could be relied on to defend our seaports against the assaults of such an enemy, so armed and provided for wasting and destroying our floating property and undefended towns.

7. To prove that great and serious apprehensions of danger were entertained, I showed that many thousands of our citizens performed daily voluntary service, in keeping up night-watches, and in laboring in fortifications and batteries, for which they never demanded or received any remuneration; that many municipal corporations advanced large sums of money gratuitously for the same common object; and that great numbers of the inhabitants moved their property into the interior.

8. I next invited his attention to the allowances made by the United States to Maryland, Virginia, and North Carolina, during the same period, which, I had ascertained from good authority, far exceeded the claim of Massachusetts, although each of these States had much less maritime frontier, and were much less exposed to depredation.

9. I contended, that it was impossible to ascertain the precise amount of force necessary to repel an enemy invading us from the sea. The movements of a fleet are rapid; the object was the destruction of property, and the dishonor of the country. Our defence

was confided to the militia, because the United States could provide us with no other force, and they having turned out in the most prompt and patriotic manner, and sustained the honor of the nation, it would be a most discouraging, ungenerous return to withhold their pay, when that is but a most miserable indemnity for their sacrifices. I enforced this reasoning by many other considerations, which it is unnecessary to enumerate, as what I have recapitulated will possess you of the general grounds assumed. At the close of the interview, the Secretary observed he would examine the documents to which I had referred, and then he should wish for another interview.

Here the interview rested for some time. I called whenever it was convenient, to ascertain what progress had been made, but had no further conversation of importance, nor were there any written communications on this question, except a brief note under date of Jan. 26th, designed principally to furnish more accurate information as to the amount of tonnage owned in Massachusetts and Maine than I possessed at the time of the above conversation; an extract from which is herewith submitted for your consideration, and marked (B).

On the 5th of February following, I was at the department, and the Secretary observed that he should probably make known his decision on the next day. This was unexpected to me, as I supposed he would have invited me to another interview; but as I felt anxious to bring the matter to a close as soon as possible, I made no objection to that course, but addressed to him a letter, recapitulating the views I have already communicated, accompanied by some additional remarks, a copy of which I herewith submit to you,

marked (C). I took this course, lest the Secretary, who is usually pressed with a great weight of business, might have forgotten the arguments which had been urged upon his consideration; and I communicate the letter to you because it forms a part of the history of my proceedings, and contains some matters which are not adverted to in the foregoing statement.

The Secretary, however, did not make known his decision until the 27th of February, when I received from him a letter dated the 26th of that month, in which he reverses his former opinion, and allows the charges for the troops, out under the denomination of "Executive Calls," between the 14th of June and the 4th of September, 1814. This letter is annexed, and marked (D). By this and the decision of the 20th of January, the whole sum found to be due by the Auditor, according to his report in 1828, was agreed to be allowed to the State, subject, however, to a deduction of \$11,000, which was advanced to the Agent some years ago on general account. The balance, therefore, was \$419,748 26, for which sum I forwarded to your Excellency a warrant from the Treasury upon the Branch Bank in Boston, early in March. Congress appropriated the exact sum found due by the Auditor; but as the act was passed for the purpose of ending the controversy between the governments, and as it seemed clearly to look to a final ascertainment of what was due, without reference to the amount, I, on the 5th of March, addressed a letter to the Secretary of War, desiring him to cause the residue of the claim to be brought under examination, that the amount remaining due according to the provisions of the act might be ascertained,—a copy of which letter is herewith submitted for your con-

sideration, marked (E). On the 7th, I received a reply, in which he declines entering upon the investigation, alleging a want of authority, and advancing the opinion, in support of that decision, that the act gives power to settle only for the *personal services* of the troops, though the sum which had just been paid embraced almost every species of charge incident to the service. This letter is submitted, and marked (F). On the 8th, I rejoined, by a letter which was not delivered for some days, in consequence of a severe illness of the Secretary, a copy of which is annexed and marked (G). To this I received a reply on the 15th, in which the Secretary adheres to his former opinion: this is also submitted and marked (H). I left Washington immediately, but on the 28th of March, after my arrival here, I again addressed him by letter, a copy of which is also annexed, and marked (I). Here the correspondence ended. These letters are so full on the topics discussed in them, that I deem it unnecessary to advert more particularly to their contents. They will unfold to your Excellency the course of reasoning adopted on the one side and the other. I have endeavored to maintain the interest and rights of the claimants, by giving to the Act of Congress its fair and legitimate meaning. It seems to me very clear that the decision of the Secretary, allowing the sum which has actually been paid, was founded upon just conceptions of the meaning of the act.

Congress intended to remove the controversy between the governments upon the constitutional law, and leave the detail of the settlement to the Department, to be conducted on the same principles it would have been if no controversy had arisen; and I cannot discover

any thing in the act, which justifies the belief that it was designed to provide for the payment of one part of the claim, and to exclude another part resting exactly upon the same principles ; and yet such is the practical effect of the final decision of the Secretary. My wish was, that he should proceed and ascertain what further sum was due to the Commonwealth, upon the principles adopted by him in allowing the amount which he had paid, and then, if necessary, we would apply to Congress for an appropriation to cover that sum as falling within the principles and provisions of the Act of May, 1830. It seemed to me that his decision to allow the amount reported by the Auditor was a clear concession that all our troops were called out to repel actual invasion or upon well founded apprehension of invasion, and therefore were to be paid and in the same manner and upon the same principles as payments had been made to other States for the services of their Militia. The act obviously provides for all such troops, and the decision of the Secretary admits that it does so provide. Yet it is true if the settlement stops here, we shall not obtain satisfaction for a very large amount of disbursements which were made for services and things precisely similar to those which have been allowed and paid. I cannot better illustrate my views of this matter and of the singular attitude in which we are placed, than by referring your Excellency to an abstract from one of the Pay Rolls, which will shew what is allowed and what rejected, and the reasons for the rejections. A single glance at it will satisfy any one that most of the objections are mere matters of form and can easily be removed, and therefore those items ought in fairness to be allowed, as much as those which have been admit-

ted to be within the provisions of the act. The abstract is annexed and marked (K). From this you will learn the condition of a considerable portion of the balance of the claim. I still indulge the hope that the Secretary will yield to my request, and cause the residue to be examined, that the amount may be known and provided for; but whether he yields to our wishes on this head or not, I feel persuaded that Congress cannot refuse to provide for the adjustment of the whole amount upon the principles contained in the act, according to the construction given to it by the payment which has been made. I am not prepared to believe that Congress intended, by passing their act, to allow pay and rations to an officer, and to withhold his legal charges for servants, forage and travel; and yet, if we are to receive nothing more, such will be the result, as you will see by examining the abstract of the pay roll annexed.

It appears to me, on the whole, that the act, by the terms of it, as well as by the construction given to it by the Secretary in his communication of the 20th of January last, must be considered as placing our claim on the same footing as the claims which have been allowed to other States, and if the Secretary shall continue to decline proceeding in the adjustment because of the insufficiency of the appropriation, or for any other reason, Congress is bound, upon the principles of natural justice, to make prompt provisions to carry into full effect the principles of that act.

It would give me very great pleasure to be able to render your Excellency a better account of my stewardship; but if I have failed of accomplishing all that was desirable, I trust it has not come of any neglect or inattention to my duty or the interests of the State. The

business has called for much labor and investigation, which I have felt no inclination to shun, but have given to it my most assiduous attention, taking care, however, that it should not interfere with my other public duties during the last session of Congress.

In closing this Report, your Excellency will permit me to express the hope that this communication, with the documents appended, will place the whole matter in so obvious a view, that it will be fully understood.

I have the honor to be,

Your obedient servant,

J. DAVIS.

(A)

J. H. Eaton to J. Davis.

SIR,—I send you the enclosed Report, for your examination. By thus placing it in your hands, you will consider it merely intended for your consideration, and not as being actually published.

Yours respectfully,

J. H. EATON.

Jno. Davis, Esq. of Massachusetts.

Jan. 20, 1831.

(A)

Massachusetts Claim.

The Claim of the State of Massachusetts for services rendered by her Militia during the late war, have been examined in reference to what I considered was the actual intention of Congress in their act of last session.

The controversy and doubt which heretofore have existed in relation to these claims, between the General Government and the State of Massachusetts, are familiar to every one. The Governor had refused to place the troops of the State under command of any General Officer. Of this character are the claims

which are to be judged of under the directions and provisions of the act of last session of Congress.

These claims had previously been placed before the accounting officer of the Treasury Department, for examination, to be reported by the Secretary of War to Congress for final adjustment. A labored and tedious examination was gone into by the Third Auditor; and in 1828 the matter was brought to the consideration of Congress for their decision. The report made presents these demands under the following general heads:—

	<i>Amt. claimed.</i>	<i>Amt. admitted.</i>	<i>Difference.</i>
Guards,	39,810 39	27,711 54	12,098 85
Alarms,	37,652 86	24,141 76	13,511 10
Calls by Mil. Officers under orders 16th June, 1814,	197,489 09	144,876 81	52,612 28
Executive Calls,	503,852 81	227,662 03	276,190 78
Defence of Eastport, 1812, and Mil. on service U. S.	12,064 12	6,356 12	5,708 00
	<hr/> 790,869 27	<hr/> 430,748 26	<hr/> 360,121 00

These differences, amounting to more than \$360,000, are produced in consequence of payments which had been made by the State, for various inadmissible articles, to wit, Clothing, Arms, &c., which were not authorized by any existing law; allowances which have not been conceded to other States, and which, consequently, ought not to be admitted in the present instance.

The act of the 31st of May, 1830, directs the adjustment of these claims, under the superintendence of the Secretary of War, upon the following conditions:—

1. "Where the Militia of the State were called out to repel actual invasion, or under a well-founded apprehension of it;—provided their numbers were not in undue proportion to the exigency."

2. "Where they were called out by the authority of the State, and afterwards recognised by the Federal Government."

3. "Where they were called out by, and served under the requisition of the President of the United States, or of any officer thereof."

The essential difficulty, and which has involved much and close examination, is in reference to the class of cases under the first general head prescribed. These are most numerous, and would present increased embarrassment, but for the opinion possessed, that in enacting the law of May, 1830, Congress intended, that the objections heretofore arising, and which are presented in the correspondence of the Secretary of War and Governor of Massachusetts during the late war, were to be discarded. The right and privilege of both parties (the General and State Governments) to exercise control over the Militia, in a period of war, as they were then argued and maintained, are not (as it appears to me) matters now to be considered. The Governor of Massachusetts, acting upon the advice of his Council, and in reference to the alleged interest of the State, did decline placing the Militia under the control of the General Government; and on the 7th of September, 1814, in communicating this determination, and assigning his reasons, employs this language :—"A few weeks since, agreeably to the request of General Dearborn, I detached 1100 militia, for three months, for the defence of our sea-coast, and placed them under his command, as Superintendent of this Military District ; but such objections and inconveniences have arisen from that measure, that it cannot now be repeated. The Militia called out on this occasion will be placed under the

immediate command of a Major General of Militia. I will thank you, Sir, to consult with the President, and inform me whether the expenses thus necessarily incurred for our protection will be ultimately reimbursed to this State by the General Government."

This letter was written three days after the date of Gen. Dearborn's communication to Gov. Strong, asking for a detail of 4650 Infantry and Artillery, and was addressed to the Secretary of War.—On the 17th of the same month an answer was returned, from which the following is extracted :—

" If the force which has been put into service has been required by Major General Dearborn, or received by him, and put under his command, the expense attending it will be paid by the United States.—If this force has been called into service by authority of the State, independently of Major General Dearborn, and be not placed under him, as Commander of the District, the State of Massachusetts is chargeable with the expense, and not the United States.—Any claim which the State may have to reimbursement must be judged of hereafter by the competent authority, on a full view of all the circumstances attending it.—It is a question which is beyond the authority of the Executive."

Here is a declaration by the Governor, which had also previously been made, that the Militia of the State could not be placed under the control of the United States, or made subject to the command of any officer of the Government;—and in reply is an avowal on the part of the Secretary of War that the State "is chargeable with the expense, and not the United States." This ground of difference, the act of Congress removes.

These circumstances, and indeed the entire facts be-

longing to the claim, were before Congress for consideration on the 30th of May last, when the law for their adjustment was passed, which declares, "that the proper accounting officers of the Treasury, under the superintendence of the Secretary of War, be, and they are hereby authorized and directed *to credit and settle the claims of the State of Massachusetts against the United States, for the services of her Militia during the late war,*" under certain conditions and provisions which already have been stated.

In discharging the trust given to me under this act, I have not felt myself called upon to consider the claim in reference to the objections which were originally made,—but simply to determine, under the provisions of the act, if at the time those claims arose, and when the Militia were called out, there was "an actual invasion, or a well-founded apprehension of invasion ;" and also, whether "the numbers were in undue proportion to the exigency."—To determine these, is all that I feel myself called upon, or required to do.

There was no actual invasion, nor, seemingly, were there any circumstances to authorize a well-founded apprehension of one, during a portion of the time.—Early as the middle of June, 1814, subsequent to which period those claims originated, application was made to Major General Goodwin, by the citizens of Wareham, setting forth that the British, a few days before had landed, and burnt a factory and several vessels.—Many of the towns, impressed with like apprehensions, preferred similar requests. The town of Brewster was put under contribution, and had to pay a large sum to prevent the burning of valuable salt-works which were erected there. British ships of war were frequently seen

hovering along the coast, and occasional landings were made, and much damage done;—but they were partial, momentary descents, for marauding purposes merely. Apprehension of invasion was confined to the citizens of Massachusetts. At this time the Government did not entertain it.—It only looked to such a result as probable and prospective.

On the 13th of June, 1814, Commodore Bainbridge, apprehending a probable descent on the Navy Yard at Charlestown, from some British vessels,—solicited, that assistance might be furnished him. He says, “The force of the enemy in Boston Bay justifies, in my opinion, apprehensions of an attack being made on this place, [Navy Yard] and calls for united exertions to defend it. The important public property entrusted to my charge, might in such an event suffer severely, and would in a considerable degree expose the towns of Boston and Charlestown.” The guards furnished under this request were discharged on the 23d of June. Commodore Bainbridge remarks that “they can at present be dispensed with.” Whether this course was taken because he believed that no further apprehensions of attack or invasion were to be apprehended, does not appear;—but about the same time, 22d, Col. Osgood’s regiment was ordered into service,—proving thereby that the fear of the citizens, at least, had not subsided. This regiment was also discharged the 30th of July following. On the 4th of July the Secretary of War wrote to the Governor of the State. He does not advert to the probability of an immediate, but of an invasion that might happen thereafter. He says, “The late pacification in Europe offers to the enemy a large disposable force, naval and military, and with it, the means of giving to the war

here, a character of new and increased activity and extent."

Upon these points we have no evidence of the opinions which were entertained by the constituted authorities of the State. Orders had been given by the Governor, directing the Major Generals of Divisions, on the happening of any emergency, to call forth the troops at their own discretion. The different and respective towns occasionally made their demands, and the Major Generals acceded to them, under their general instructions, without any immediate or direct authority from the Governor. The fact of a probable invasion, however, on the grounds presented, being admitted, the question to be settled, is, whether the numbers called for, "were in undue proportion to the exigency."

Those troops who are under the head of guards and alarms, whether considered as to time or numbers, are not in undue proportion. Nor are troops under the class of Executive calls, which [is] the larger proportion of the demand, so to be considered. The latter came into the field at a time when general fear and apprehension pervaded our entire coast. Rumor, in various forms, told of a large force which was about to leave England, destined to move against this country; but at which point to be landed none could tell, though apprehension suggested it to be at any and every point. Previous to this time, Eastport had been taken possession of by the enemy; though in this there was nothing indicative of invasion, or as being for a purpose other than Fitzherbert, the Lieut. Col. then commanding, avowed it to be. In a letter addressed by him to Brigadier General Brewer, on the 12th of July, the day after the surrender of the post, and which letter he states was written by direction

of Sir John Sherbrook, "for the information of the people of Robinstown, and elsewhere on the main land," he observes, "the object of the British Government is to obtain possession of the islands of Passamaquoddy Bay, in consequence of their being considered within our boundary line: that they have no intention of carrying on offensive operations against the people residing on the continent, unless their conduct should oblige us to resort to the measure; and in the event of their remaining quiet, they will not be disturbed either in their persons or property." This official communication was immediately made known to the Governor of Massachusetts. It shows the intention of the enemy, that no attack was meditated "against the people residing on the continent;" that the object simply was, to take possession of those islands, which, by the original treaty of boundary, was believed to belong to Great Britain. It was subsequent to this period that serious apprehensions, and upon reasonable grounds, began to be entertained; and when preparation against assault appeared indeed necessary. Late in August, Castine was taken possession of, and occupied; and about the same time, the city of Washington, the Capital of the country, was attacked, carried, and its public buildings destroyed. Other neighbouring cities were threatened. At this moment, and under these circumstances, the calls under consideration, by the Executive of Massachusetts were made. These I consider to be within the meaning of the act of the last session, which was passed in refer- to this subject, that there were grounds to apprehend invasion, and that the number of troops called for, and placed in service then, was not unsuited to the reasonable peril—the exigency of the occasion.

That part of the claim presented, about which doubts have been entertained; embraces calls of the Militia which were made by the State Major Generals, under an order of the 14th of June, and in pursuance of which a considerable demand arises. Upon this part of the subject I have advanced with much distrust, not feeling entirely and altogether satisfied with the conclusion to which I have arrived.

At the period when this call was made, is found the declaration of Commodore Bainbridge, that the troops which he had solicited for the defence of Charlestown, and for protection against a probable attack upon the Navy Yard, "can at present be dispensed with." This was an important point. The Independence 74 was there building, and much public property was at the Navy Yard, the destruction of which could not but be of high consideration with the enemy; and yet, on the 23d of June, the Commodore dismisses these troops, in whom he had great confidence, from service. If there had been any probability of an attack, or an invasion, so qualified and discreet an officer as Commodore Bainbridge, is every where known and admitted to be, would not have proceeded with such want of precaution as this act would evidence.

During the months of June and July, at different points in the State, more than one thousand United States troops were stationed; and in the month of August were increased to 2060. These, with the auxiliary force, which under the head of Alarms and Guards, had, during the time been called out, and which were in service, appear to me to have been fully sufficient for the exigency; added to which there were detachments

of Militia during the time, in service, under the immediate control and command of General Dearborn.

It does not appear that the enemy was in such force as to attempt an invasion. Partial descents along the coast, in their barges, in inconsiderable strength, were the only dangers to be apprehended ; and these were to be met and repelled, at all other than important points, by the Militia of the neighborhood, held in readiness, but not called into service. They were fully competent to such service, and should have been relied upon to perform it. The governor, in a communication made to the Secretary of War on the 5th of August, 1812, employs language which justifies this assumption.

He says, "Every harbor or port within the State has a compact settlement, and generally the country around the harbor is populous.

"In Boston, the Militia is well disciplined, and could be mustered in an hour upon any signal of an approaching enemy ; and in six hours the neighboring towns could pour in a greater force than an invading enemy will bring against it.

"The same remark applies to Salem, Marblehead, and Newburyport, places where harbors render an invasion next to impossible.

"Kennebunk is unassailable by any thing but boats, which the numerous armed population is competent to resist. Portland has a Militia and independent corps, sufficiently numerous for its defence ; and the same is the case with Wiscasset and Castine.

"Against predatory incursions, the Militia of each place would be able to defend their property, and in a very short time would be aided, if necessary, by the Militia of the surrounding country. Considering the

state of the Militia in this Commonwealth, I think there can be no doubt that detaching a part of it, and distributing it into small portions, will tend to impair the defensive power."

It will be perceived that the Governor has enumerated most of the principal towns, and given the assurance that within themselves they possessed the capacity of ample defence against any predatory system of warfare ;—and none other, during the period adverted to, was to be apprehended. Serious invasion was not thought of; or at least there were no circumstances, no show of actual force to induce to such a conclusion.

Under all the circumstances presented, therefore, I cannot conclude otherwise than that the force employed by the State, under the calls of June, 1814, were, to the 4th of the month of September, "in undue proportion to the exigency," and hence do not feel myself at liberty, during that period, to sanction the allowance. It is indeed but matter of opinion, which may or may not be correct; yet it is that which the law I am considering makes the touchstone of my action and decision on the case. I may be charged with prejudice! I have none. Under the same circumstances, with the law which creates my authority, and the facts which arise, I should come to the like conclusion, were the claim presented from my own State. Acting in a public capacity, I have no feelings to entertain—no prejudice to indulge.

My decision then is, that the claims under the class of Guards and Alarms be "settled and credited," subject to any exceptions which have been made in cases of other States. These acted under sudden emergencies, were auxiliaries to the forces of the United States,

were videttes to give notice of danger, and of its approach, and at no time appear to have been in undue proportion to the exigency.

Executive calls will be admitted under the same rule of settlement, for the reasons already given.

The report of the Third Auditor, of January, 1828, will form the basis of the adjustment to be made. From the admissible amount then stated, to wit, \$430,748 26, there will be subtracted such items of that estimate as by this report are disallowed.

The two companies called out the 15th of September, 1813, for the defence of Portland, are not to be deducted; nor will the Guard which acted with Commodore Bainbridge; these being troops which served under an officer of the government. Any payments which have been made by the United States, on account of Militia service in the State, will be deducted.

J. H. EATON.

John Davis, Esq., Rep. in } 19th Jan. 1831.
Congress from Massachusetts. }

(B)

Extract of a Letter from Mr. Davis to the Secretary of War, dated

Washington, Jan. 26, 1831.

"Since I had the pleasure of seeing you, I have ascertained that Massachusetts, including Maine, had, in the year 1814, 371,824 tons of shipping. Boston had

107,199 tons, Portland 31,913, Wiscasset 16,715, Wal-doborough 16,292, New Bedford 23,109, Gloucester (Cape Ann) 8,953, Salem 28,847, Newburyport 19,890. You will see by this statement, as a very large portion of the vessels were then in port, the vast amount of property at hazard. New Bedford is one of the places attacked in June by nine barges, containing 400 men. The torch applied to this shipping would do the work of destruction very quick, and nothing short of artillery could prevent it. The inhabitants of New Bedford thought, and surely correctly, that there was no safety without an organized military force, ready to act at all times, while the enemy were in their waters, as the fort had but 7 guns, and about 20 men and boys in it. General Lincoln says it could only be defended outside of its walls.

" You will also appreciate the danger and the property at hazard in Gen. King's Division, when you look at the amount of shipping at Bath, Wiscasset, &c., especially when it is considered that the enemy had avowed his purpose of destroying this property.

" You can learn something of the condition of the forts, and of the amount of property, from Gen. King's letters published in Doc. 83, 18th Congress, pages 159, 160. You will also see on this head his views, at pages 38, 39, of the Documents I left with you.

" I need not add that the shipping, to say nothing of the other property, on Boston Bay, was worth several millions of dollars. When we add to all this the fact, that the enemy were almost daily assailing the country, at some one or more of its exposed points, burning the shipping, and in several instances carrying away or destroying other property, it seems to me the people

had most justly a well founded apprehension of invasion.

"They saw also great danger in the circumstance that the enemy had a large disposable force, which could be easily and in a very short time concentrated, for it moved on the wings of the wind. This was fully proved when Castine fell into their hands.

"I could add much to strengthen this view of the subject, but I will only trouble you with one remark. It appears most abundantly, that the State was most anxious to avoid any except absolutely indispensable expense, and that the officers to whom authority was confided were directed not to keep troops in service unless the public safety called for them. They were on the spot, and saw the danger, and could form a more accurate estimate than any one can who has less means of arriving at the truth."

(C)

J. Davis to J. H. Eaton.

Washington, Feb. 5, 1831.

SIR,—In my conversation with you, and also in a hasty note I addressed you on the 26th ult. I pointed out the condition of the State of Massachusetts in the year 1814, and the dangers to which she was exposed, and I now beg leave again to advert to the same facts with some additional remarks.

1st. I called your attention to the great extent of maritime frontier, being nearly, if not quite, 600 miles exposed to depredations.

2d. I described the character of that coast, pointing out the facilities it afforded to an enemy of superior naval force to wage a destructive war upon us, by reason of the numerous undefended points, and the numerous, safe and convenient harbours which he could enter and occupy at pleasure, and thus be enabled to maintain his cruising ground, in all kinds of weather, as he did. I referred you also to the maps of that territory, which show how it is indented with bays, rivers, and harbours, giving access to the interior, by reason of the great depth of water, and by a tide of 10 or 12 feet in its usual flux and influx—and stated also what is well known, that many of these harbours and passages have upon them very little population, and are and were wholly undefended by fortifications.

3d. I stated that the shipping of Massachusetts in the year 1814 amounted to 371,824 tons, which was probably mostly in port, and scattered along this frontier, where it belonged, a great amount of it being in places relying wholly on the militia for protection.

4th. I adverted to the fact, that in 1814, by reason of the peace in Europe, the war here was prosecuted with increased vigor, our coast being rigorously blockaded by a great marine force which had a two-fold object; first to cut up all trade and intercourse by water; and second, to destroy all shipping, whether in port or out of port, as well as to seize upon and occupy such weak points as could not be defended, the possession of which would annoy us and interrupt our intercourse.

5th, I show from the documents and the history of the times, that during the Summer of 1814, a large armament well prepared and equipped with men, arms, boats, tenders, &c. &c. was constantly hovering on our

coast, menacing our towns and shipping; in many instances destroying the latter, and constantly attempting to land, or penetrate our harbours and rivers for the wasting purposes of war. I also invited your attention to another important fact, namely, that this force when concentrated, constituted a powerful armament, and that it was in the power of the enemy to draw together a fleet made up of the vessels scattered along the coast of Massachusetts, and those usually at the rendezvous at Halifax, which would have carried dismay and destruction with it, in defiance of any force in the service of the country, in the Summer of 1814, and that such a concentration might be made before the news of the intent could reach the point endangered; for all communication by sea with our people was at an end.

6th. I also desired you to look at the evidence derived from Gen. King and others, by which it appeared that the forts of the United States in many places were decayed,—in some, deserted because incapable of being defended,—in others, only nominally manned, the troops having been withdrawn and embodied with the army. What the actual number left was, or how it was distributed, I have not by me any means of knowing, except from the statements contained in your instructions to the accounting officers of the Treasury.

Having pointed out these general facts which seem to justify maintaining the force which was out in the Summer of 1814, I then invited your attention to the particular circumstances which attended the charges for troops at some of the important points, and believing that a brief review of that ground will not be unacceptable, as it will aid in ascertaining the truth, I will venture again to trouble you with some remarks upon it.

The troops objected to serve under executive calls between the 14th of June, 1814, and the 4th of September following, and the above observations show the general state and condition of the country, and the mode of warfare. We will now see what was done at some of the more important places, and the reasons for doing it.

Under Executive calls, marked (C) in Document 3. page 498 published by the Senate at the first Session of the 21st Congress, are charges for troops who served at New Bedford and Fair Haven in June and July. New Bedford which lies on a river which discharges itself into Buzzard's Bay, had been largely concerned in the whale fishery, and had then in port, as Col. Lincoln states, more than 50 ships, besides a great number of other vessels which tempted the cupidity of an enemy who was a rival in that business. The harbour was protected by a small fort of 7 guns, manned as the same officer informs us, with 23 men and boys. On the 13th of June the enemy, who with several ships of war, was constantly cruising off the coast in this neighbourhood, made a sudden descent about day light, in the morning, upon the place with 9 barges containing 400 men, with the intent to destroy this property. It will be recollect ed that previous to this time, Falmouth had been cannonaded by the Nimrod: Wareham had been invaded, the shipping destroyed, and a factory set on fire.

These were towns in the same portion of the State. On the 3d of July, Col. Lincoln says they had thrown up a new battery, and "the enemy are in sight of the harbour continually."

On the 21st of July, he says, a barge with 30 or 40 men was sent into West Port, but was beat off before the shipping was destroyed. He also observes, that

"the British force in our sound has been recently augmented." This force, as I understand the matter, blockaded this part of the coast, and continued active in its exertions to do mischief through the season. I will not go more into detail of the facts, for it seems to me there can be no doubt, that the circumstances justified the Major General in calling out troops to defend these towns, and he would have been criminally guilty if he had failed to do it. It will be borne in mind that Gen. Dearborn confirms this view, for on the 8th or 9th of August he stationed at Fair Haven a force of 90 men, when most if not all the troops ordered out by the militia officers were dismissed. Now, if these troops are not to be allowed, it follows that New Bedford was not entitled to any measures of defence through all the peril which existed antecedent to the 8th or 9th of August, for there were no troops then except a few guards at Fair Haven and those in the fort. The descents of a marine force are generally sudden, and the work of destruction is over before the assailed recover from surprise. An armament spreads its flag in your waters in the morning, and before mid day it is gone you know not where, to surprise some other place, and will return when you least expect it, and steal upon you in the night, or at a moment when you are least prepared to meet it. These movements are so rapid, that there is no safety short of a constantly organized force, ready to meet and repel assaults at all times. You will not be surprised when you read in the documents that the inhabitants were in a state of alarm and consternation, nor will you doubt what can be proved by thousands of living witnesses, that voluntary service was performed by vast numbers of our citizens through the perilous periods of 1814, for

which no pay was ever desired or sought for. That New Bedford and the towns in that vicinity were in eminent jeopardy in the Summer of 1814, from the enemy, does not admit of doubt, and that their shipping would have fallen a victim to the marauding disposition of the enemy if he had not been repelled by the Militia, is equally clear. The number of persons who were out as guards, seem in the judgment of all the officers and citizens to have been considered wholly inadequate to arrest the enterprises of the enemy. The only question therefore, is whether Col. Lincoln called out too much force. By what rule shall this be measured? Who can tell when an attack is to be made from ships of war, the precise number of men necessary to repel the assailant? If the force is too small, and is overcome, the calamities which ensue in the loss of life and property can better be imagined than described. The dishonor too to the country must stand as long as there is a faithful record of history. It seems to me clear that it is better to have too much force than too little. We are to look at the thing at hazard, the lives and property of our fellow citizens, both of which the government stands obligated to protect, if it be in its power to do so. We learn at the very first onset at New Bedford, 400 men were detached from the enemy's shipping to make the assault, and it appears his force was afterwards increased. Now the Militia had not only two towns to defend *there*, one on each side of the river, but many other points which commanded passes in other directions and to other places.

This force of the enemy continued off these ports for a long time, and perhaps at some moments of great alarm, the number of men might have been greater than

the result proved to be necessary, but at no time was it equal to the number of the enemy ; and when we consider the great difficulty in determining the precise number necessary to give efficient protection to so important a place as New Bedford, it seems to me the government is called upon by every patriotic motive to be liberal, if they mean the frontiers shall be protected in time of war. To say to the soldier who has promptly met and repelled an invader, he cannot be paid because there were enough without him, would tend to extinguish the patriotic ardor of our citizens, and make men mercenary by the exercise of a mercenary spirit in the government. Before pay is withheld on this ground, there should be a plain palpable error on the part of the officer commanding the station—the excess of troops should be obvious. This can hardly be said of the corps at New Bedford, for the officer in immediate command thought he had none too many for the emergency, and so thought the people. They were on the spot and saw and appreciated the dangers with more exactness than persons at a distance. They saw and comprehended the various ways in which this force might be brought to bear upon them, and surely great deference should be paid to their opinions. I will dismiss this part of my observations by remarking that New Bedford and the neighbouring towns must have fallen victims to the desolating hand of war long before Sept. 1814, if the Militia had not defended them. When danger first comes upon us, it creates more excitement and apprehension, than when we become accustomed to it and learn how to meet it ; and there might have been moments of alarm, when the people in that part of the country magnified the peril ; but on a calm review of the circumstances, I cannot

persuade myself that they did not act wisely and judiciously.

Passing over many small places which it would be too tedious to mention in detail, I will now notice Boston. The services here objected to fall under the class (D), page 83, of the same document. We have it from Commodore Bainbridge, who commanded at the Navy Yard at Charlestown (which it will be observed is for all military purposes a part of Boston), that on the 13th of June the danger was so pressing as "to call for united exertions to repel it." A company was placed under his directions, and on the 23d of the same month, in a letter to Capt. Sullivan, he agrees to *dispense* with the services of that company. It has been inferred from this, that the danger had subsided. I am not in possession of the letter from Capt. Sullivan to the Commodore, but I infer from the reply that an *application* was made for a discharge of this company. - They were business men from the city, and doubtless were in service at a great sacrifice, and therefore anxious to be discharged. The reason of the discharge, and of Commodore Bainbridge's saying their services could be dispensed with, was doubtless this:—on the 22d of June, orders were issued by the Governor to detach a regiment for the defence of this post, and it is obvious that the occasion for their services was superceded in this way. This regiment was detached from the militia of Boston, and entered on duty for a month with four 18 pound battering cannon and two field pieces. That the danger had not diminished is obvious from the fact that the Bulwark 74, and Nymph and Tenedos frigates were then cruising in our waters, and two of them manœuvred in sight of the city on the 3d of July. In addition

to this, on the 29th of June, news was received at Boston, that an expedition was preparing at Bermuda, and to sail immediately for the American coast, consisting of four 74s, six frigates, with several sloops of war and transports, with troops. Its precise destination was unknown, but the intelligence came direct, and the ships were named.

This force, if I am not mistaken, entered the Chesapeake.

On the 12th of August, Gen. Dearborn requested the Adjutant General that some small force might be stationed at Duxbury and Cohasset and other small towns, as the inhabitants had made application to him for that purpose. He desired that small detachments might be turned out, without formality or ceremony.

This is the substance of the facts in relation to the troops serving upon Boston Bay in June, July and August, and without entering into a detailed examination of them, I will merely inquire whether it would not have been madness to omit making preparation for the dangers which seemed to beset them. When so strong an armament as a 74 and two heavy frigates, filled with men, look into a port, and manoeuvre in the face of it, it is time to prepare for their reception, unless you mean to be taken by surprise. That experienced officer Commodore Bainbridge, in his letter of the 5th September, writes as follows: "Allow me, my dear General [Brooks], to say that *if the Militia is not embodied in the field*, I should much fear the work of destruction would be over before they could rendezvous or oppose; for four or six hours would be all the time the enemy would require." I feel confident that this officer would not have reposed in peace in the month of July, with

such a force staring him in the face, if Col. Osgood's regiment had not been in service. I ought also to add, that this regiment was ordered out upon a special application of the Selectmen and inhabitants of Boston and Charlestown. With these observations I submit to your judgment whether this force which was before Boston, as well as that upon the coast, which could easily be concentrated, did not fully justify calling out a regiment to protect so important a place, and whether the same reasoning does not apply with equal force to the neighboring towns.

The next place to which I shall call your attention is Gloucester (Cape Ann), page 96. The town in a body, on the 13th of June, represent that the enemy landed at the wharves and burnt the shipping. The force stationed here, in consequence of the very strong representations of the inhabitants of daily attacks upon them, continued to occupy the port until a detachment of militia taken into the service of the United States on the 8th of July took their place, when they were about to be discharged, but on the representation of the inhabitants of their very exposed situation, they were directed to remain.

It appears also that one of the batteries was taken, and the cannon spiked, notwithstanding all the force.

The Selectmen also certify, page 101, that the town was constantly, during the summer and fall of 1814, exposed to the depredations of the enemy. "The enemy was constantly attempting to land, and was prevented from this and other outrages by the Militia." They represent also that the houses were fired into. The evidence of exposure and of actual injury is very strong antecedent to the 4th of September as well as after;

and I will leave the matter for your judgment without further comment.

I fear I shall protract these remarks beyond your patience, and will therefore give Portland, and the district of General King, but a passing notice. On the 22d of June, the Committee of Safety for Portland implored the assistance of the government, representing that "great consternation and alarm universally prevailed among the inhabitants." They say, "the inhabitants are removing their goods and effects out of town, in consequence of our want of preparations for defence;" "a full meeting of the town was held on Monday last, and the committee act by *order and vote* of the town." They add, "The principal part of the United States' force have marched off." I refer you also to the letter of the Hon. John Anderson, which is herewith transmitted, who was then a resident of Portland, and confirms all that is said, remarking that there was not a work deserving the name of "fort" on the whole coast of Maine. Under such pressing circumstances, with a very great amount of shipping and other property exposed, two companies, I think, were furnished for their defence. This town, it will be remembered, fell a victim to savage ferocity in the war of the Revolution. You cannot, perhaps, find stronger evidence of a sincere conviction of danger than when you see people fleeing from their homes to escape it, and turning their town into a fort by the erection of batteries for voluntary labor, as was the case in Portland. After a portion of the troops detached and placed under Gen. Dearborn were stationed at that place, say in the fore part of August, it was thought advisable still to retain in service other militia, and you find strong reasons for this ex-

pressed by the Committee of Safety, and also by Mr. Anderson. The latter gentleman says there were then (August) three 74s, a 60 gun ship, with a due proportion of frigates and sloops of the enemy, constantly on the coast and threatening attack.

At Bath, Wiscasset, &c., Gen. King has given a full account of his proceedings, and of the reasons. (page 68, &c.) He says, on the 24th of June after describing the active and threatening operations of the enemy, he left 40 men in the fort at the mouth of Kennebeck river, at the request of the *Lieutenant of the fort*. In his letter of the 23d, he says, “*no more* of the militia have been detained in service than is necessary to guard the various points and narrow passes on the river. When we were first alarmed, some of the companies were ordered into the forts, *which were almost destitute of men*, presuming they would be more useful there than in any other situation.” In another letter of the 24th he says, “It was quite an object with me to lessen the expense as much as possible.” It appears also that formal and urgent application for protection was made by the inhabitants of Bath. Gen. King also represents, that in order to determine how many troops were necessary near Wiscasset, he “sent for Capt. Perry, commanding officer of the fort, and requested him to state what number of men he considered necessary to defend his fort in case of attack.” His answer was, “One hundred at least.” To the question, How many men have you in the fort? he answered, “Eight.” I need not add that there was one 74 and a frigate, with smaller vessels, in these waters most of the time; that there was a very great quantity of shipping, and that every effort was made to destroy it as well as to carry off

other property. The attempts to land were constant, and the skirmishes as frequent. The barges when foiled in one direction, took another, and kept the whole district in constant jeopardy.

It is not my purpose to ask your attention to the condition of particular towns, any further; for the necessities and dangers which beset those I have enumerated, were shared in common by all, and it would be difficult to make any discrimination. I have gone thus far, not for the purpose of shewing greater peril at the places enumerated than at others, but to shew the nature and character of the war, and that the population of the coast, as well as their property, were in great jeopardy. It has been my purpose to advance nothing, except what is borne out by well-known facts. If the evidence be not plenary, I am persuaded I can make it satisfactory from sources on which you would place the most implicit reliance. The general state and condition of the coast—the strong force of the enemy—the vigorous blockade—the marauding character of the war—the settled determination to destroy our shipping—the peculiar preparation to carry on such warfare, and the defenceless condition of the coast, are all facts so notorious that no one can be ignorant of them who lived in those times. They speak for themselves a language which cannot be mistaken, and prove that the seaboard was indebted to the citizen soldiers for its safety. The Militia are in truth, and ever have been, the great rampart of the frontiers, and it is on their patriotic devotion that we must rely. Important positions may be made strong by military works, but our wide-stretching seaboard can never have any other than a living breast-work to defend it, until we become masters of our own

waters. It is the armed population which an enemy who approaches this country fears more than all other strength that he is to encounter. Hence it is of vital importance to us to cherish a regard for the Militia, and to reward their exertions to save the country from dishonor. I trust, on the whole, that these proofs, though brought together in a desultory manner, will fully sustain me in my belief, that no force was sent under the order of June 14, 1814, and other orders, which the exigency of the times did not call for, and which, in the application of the rules which have been extended to other States, will not be allowed.

I have written in much haste, for I did not think of addressing you until this evening, as I had supposed, until Friday last, that we should probably have another conversation ; but as you seem much pressed with business, and as you expressed a hope that you would be able to bring the matter to a close in a day or two, I thought, as it was possible I might not see you again, I would run over the subject on paper. As I have no time to take a copy of this, you will greatly oblige me by giving me an opportunity to take one after you have perused it.

With great regard,

I am, dear sir,

Your obedient servant,

(Signed) J. DAVIS.

Hon. J. H. Eaton, *Secretary of War.*

(D)

*J. H. Eaton to J. Davis.*Department of War, }
Feb. 26, 1831. }

SIR,—I have been so much pressed with various kinds of business, so much engaged with different tribes of Indians, who are at the seat of government upon matters of interest to them, as to be unable until now to examine and consider the remarks recently offered by you on the subject of my report concerning the Militia Claims of your State. My solicitude finally to decide upon their merits has been great as your own, and I have to regret the delay as much as you do.

It is true, as you allege, that the various bays and indentations of your coast presented an extensive maritime frontier, open constantly to the attacks of the enemy, and which was necessary to be defended. But in the examination which I made of the case (taking into view the declaration of the British officer after the capture of Eastport, and the assurances of the Governor as to the capacity of the militia at any time to repel assaults, without any previous arrangement of them), my opinion was formed that the force in service, exclusive of the calls in June, 1814, was amply sufficient for all the purposes of defence. This opinion, however, was reluctantly arrived at, nor was I entirely satis-

fied with its correctness. Subsequent information obtained, and a more close examination, satisfy me it is not correct, and hence with much pleasure it is reversed.

By adverting to the accounts for militia service in two of the States (Virginia and North Carolina), during the months of June, July and August (and which have been settled and paid at this department), it appears that in the latter State, during this period of our history, about 900 militia were in service, at an expense to the government of more than \$60,000. In Virginia, the number of militia, for the same time, amounted to 17,000, and were paid about half a million of dollars for their services. The cause of this difference in amount of expenditure within those States, may be traced to this circumstance, that North Carolina possessed a sea-coast so difficult of access as to afford to her a security which did not attach to any other maritime State. But as it regards Virginia and Massachusetts, the difference is much in favor of the latter. A greater extent of sea-coast, more harbors to defend, and more shipping to protect, should necessarily require even a larger number of militia than were employed in Virginia; but they were fewer. This reasoning and view being admitted, I am constrained to say, that if the prospect of invasion, during the summer of 1814, in North Carolina and Virginia, was such as to authorize payments to be made to them for militia service, in discharge of the trust before me I cannot, during the same period, declare that a different rule of justice and settlement should be made applicable to any other state. The adjusted balance, therefore, of \$144,876 81, which accrues for the months of June, July and August, the payment of which was

refused in my report heretofore submitted to you, is directed to "be credited and settled."

Very respectfully,

J. H. EATON.

*John Davis, Esq.
House of Representatives.* }

(E)

J. Davis to J. H. Eaton.

Washington, March 5th, 1831.

SIR,—That portion of the Claim of Massachusetts which the examining officers have certified to be fully vouched, having been disposed of, I have now to ask your attention to a large balance which was paid out of the treasury of the State for military service during the last war, and which was either suspended or disallowed by said officers, for the reasons set forth in certain manuscript documents called "Rough Notes."

Many of the items were suspended, as appears, on a rule of usage, for your sanction; others because of some deficiency or informality in the evidence; others upon an agreement between the Executive and the agent of the State, &c. &c. But these payments made by the State were for expenses incurred in the same service, by the same troops, and upon the same occasions, as those which have been approved by the Department, and are, therefore, to a great extent, to say the least, a part of the same service and inseparable from it unless by a violation of justice.

I have always entertained the opinion that the statute of May last provided for the liquidation of the whole claim, as both my conversations and correspondence will show ; and I have entertained the full persuasion that you concurred in that opinion, from the tenor of your favor of the first of November last, in which you say, "The act of Congress has reference to a final and full settlement of *all* claims, under the provisions and principles which the act declares. It is hence necessary that *all* the claims should be presented before any general decision shall be made." You intimated, however, yesterday, in our conversation, that the act might call for a more limited construction by confining the allowance to the State, and indeed the settlement of the whole claim, to the amount of money appropriated. The practical effect of such a limitation would be to pay the troops of Massachusetts less for the same service than is allowed to the troops of other States ; and I am not willing to believe that Congress could design to make such an invidious distinction. The great respect I entertain, however, for even the suggestions of the Department, has induced me to look at the act with care, and to consider its provisions with attention ; and I feel constrained to declare frankly that my convictions remain unaltered.

It seems to me that the very terms of its provisions, which are almost in the words of the rules of the Department, which have been adopted from time to time in settling the claims of other States, imply most strongly that no discrimination unfavorable to the claimants is to be made. This view of the matter is greatly strengthened by the facts, that the claim was not referred to Congress to settle the amount due, for that was not the

matter in controversy between the governments, but a question of entirely different character. The charges and payments of Massachusetts were like those of other States, and could have been as easily adjusted, had not a question of power arose.. The reference was made to settle this question, because the Executive alleged it was not in the scope of his authority. If the settlement stops here, the State will be left in a most embarrassing situation. She will still have a claim for the balance of the same service which the act provides for, and which has been in part settled, a portion of which balance is clearly due within the very terms of the act; for it is for service to repel actual invasion, or rendered upon well founded apprehension of invasion, and yet it is so mixed with other matters that its amount cannot be known until it is separated.

I have never supposed the appropriation was designed for any other purpose than to pay at once what had been ascertained to be due. If it is to go beyond this, and give the construction intimated to the act, the other provisions of the act cannot be executed; for express provision is made for the settlement and allowance of *all* the services in the three cases mentioned in it. If the sum is insufficient for this, and the settlement cannot go beyond it, then a part of these services must remain unsettled.

I will forbear entering more at large into this question at present, for I will not hazard the attempt to anticipate the views which led to the suggestion made by you yesterday. You gave me to understand that your mind was open to reasoning upon this subject, and from the candor which has characterized your former decisions, I feel assured that this question will meet with a careful and dispassionate consideration.

If objections to the course I propose still exist in your mind, and I can be apprised of them, it will give me great pleasure to make an effort to remove them. I hope to hear from you soon.

I am, dear sir, with great regard,

Your obedient servant,

J. DAVIS.

Hon. J. H. Eaton.

(F)

J. H. Eaton to J. Davis.

Department of War, }
March 7, 1831. }

SIR,—I have received your letter of the 5th of March, urging a further examination of the demands of Massachusetts upon this government.

These claims have been a long time deferred. Nearly seventeen years have passed by since they originated. Repeatedly they have been the subject of examination by Congress, and until May 1830, nothing definite or certain took place in reference to them. Then the act passed which authorized and directed me to superintend their adjustment.

The provisions of the act of May 1830 confines the settlement of the claim to payments to be made on account of "the services of Militia during the late war." No other authority than this was conceded by the act.

The ground of argument to be assumed is, that the items of miscellaneous charges, heretofore, in 1828, deemed and declared to be inadmissible at the Treasury Department, may now be considered in a different point of view. That the service being admitted, those items of charge which are for clothing, rations, arms, munitions, &c. &c., should rest upon the ground of similar applications from, and allowances to other States, subject only to the approval of the Secretary of War. It is not in my power to adopt this reasoning. The claim of Massachusetts has been uniformly resisted, and its allowance refused, because the Executive of the State had declined to place these troops at the disposal of, and subject to, the control of the General Government. Of course, while the refusal rested against the legality and character of the service, it was not practicable to admit claims and items of claims, which were mere consequences of that service.

How can I consider of this matter differently now? But for the act of May, 1830, the claim under objections previously urged and maintained, could not be paid. The provisions of that act removed these objections, and the department was directed to "settle and credit the claims of Massachusetts" in cases where the Militia had been called into service "to repel actual invasion, or, under a well-founded apprehension of invasion." Here the direction ceased. I am not at liberty to say, that Congress having relieved against the objection heretofore insisted upon in reference to personal services, that, therefore, it is to be understood, that the broad and entire merits of the demand of your State, in all their various bearings are alike to be considered as removed, more especially, can I not argue thus, inasmuch

as the appropriation made by the act of May, 1830, is a limited one. It will be plainly perceived by you, that the authority given me by that act is in reference alone to personal service, which the troops of your State had performed during the war, and whether a farther adjustment, as to other matters of expenditure shall be considered, seems to me, to rest entirely in the discretion of Congress.

Very respectfully,

J. H. EATON.

John Davis, Esq. of Massachusetts.

(G)

J. Davis to J. H. Eaton.

Washington, March 8th, 1831.

SIR,—In reply to your note of yesterday, in which you decline all further examination of the claim of Massachusetts, on the ground that you have no authority to proceed further, I beg leave to lay before you the facts, which in my judgment have a bearing upon the question between us, that they may stand in their appropriate connection, as the final decision of that question may affect deeply the rights and interests of the States concerned in this claim. I desire to be allowed to pursue this course, for the objection now taken is new and wholly unanticipated by me, and will, I have no doubt, excite the surprise of the people of Massachusetts and

Maine, should it be adhered to, for they are waiting with confidence for a different result. It is necessary therefore that I should recur to the history of events, that the whole matter may be understood. This will tend strongly to elucidate the subject, and will, I trust, remove the objections which have been made against further investigation.

On the 31st day of May last, the act "Congress providing for the settlement of the claim was approved by the President. On the 9th of June, following, Governor Lincoln addressed to you a note, in which he distinctly avows his views of the provisions of the act, by asking for payment of the sum certified by the Auditor, and a speedy examination and adjustment of the balance. On the 29th of the same month he again addressed you, reiterating the same request. The first of these letters was answered by Mr. Randolph, who stated that you was absent, and that he had no authority to act in your behalf. You replied to the second from Tennessee, under date of the 18th of August, and among other things observed "I have written to the Third Auditor to have the account prepared and in readiness under the general heads directed by Congress, that on my arrival it may be acted on." On the 9th of July, having received official notice of my appointment as agent of the Commonwealth for the settlement of the claim, I addressed a letter to you, in which I requested that the portion of the claim which had been suspended or disallowed might be brought under examination for allowance. On the first day of November following, I had an interview with you in this City, and in pursuance of a suggestion made by you in the conversation, I addressed another note to you, in which after stating the condition of the claim,

somewhat in detail, I expressed a wish that the portion allowed by the officers of the Treasury might be paid, and your attention be directed to the residue. In a note of yours addressed to me, and bearing date on the same day, you observe, "the act of Congress has reference to a final and full settlement of *all* the claims under the provisions and principles which the act declares," and you add, "it is hence necessary that *all* the claims should be presented before any general decision shall be made."

I must be permitted to declare that from this correspondence, and this interchange of views, I embraced the belief that no difference of opinion existed as to the construction of the act, and in truth, I never looked for any on this head, for it never occurred to me that the language was capable of the limited sense now given to it, until the idea was thrown out at the Department a few days since. I supposed the direction to the Auditor, "to have the account prepared and in readiness under the general heads directed by Congress," embraced the *whole* account. I entertained the belief also, when it was made a preliminary requisite, "that *all* the claims should be presented before any general decision," because "the act of Congress had reference to a *final* and *full* settlement," that the whole account was to be adjusted and settled by virtue of the provisions of the act. Having now reiterated the sentiments which have guided my mind thus far in the transactions relating to this settlement, and having also made known the feelings, views and expectations of those I represent; I beg leave in the most respectful manner, to submit to your consideration my opinions more in detail as to the true interpretation of the act.

You maintain, if I rightly understand the tenor of your letter of the seventh inst. that it covers only the *personal service* of the Militia, while I entertain the belief that it was designed to give to the State, the same measure of relief which has been extended to other States, in all the cases of service which it embraces. To arrive at the true meaning of the act, two things are to be considered; first, the subject matter which was the cause of the enactment; and second, the phraseology employed by the Legislature to express its intentions. First, why was the act passed? In answer to this inquiry I will take the liberty to repeat in substance what I have said in a former communication. Neither the amount of claim, nor the matters of charge were the alleged causes of its reference to Congress. In these respects it was in no wise dissimilar to the claims of other States, and therefore legislative advice and instruction was neither needed or sought for on this head. The President in his message of the 24th of February 1824, has assigned two reasons for this reference. First, because the Executive of Massachusetts, assumed to judge for himself, when a constitutional emergency existed for calling the Militia into the public service, and secondly, because he considered the Governor as having maintained the doctrine, that the militia in actual service were not subject to be commanded by any officer of the United States except the President.

He founded his objections to what he conceived to be the opinions of the Governor on the constitution, and committed the matter to Congress, because he viewed it as involving an important principle, which the executive could not settle; but at the same time he strongly urged that body to waive the objection, and place the

claim on the same footing as those of other States. Now I do not desire to draw these questions, raised by the two executives, into consideration; for you expressed an opinion (in which I fully concur) in your communication of the 20th of January, that you are not called upon "to consider the claim in reference to the objections which were originally made" against it. My only motive for adverting to this message is to show the reasons alleged for sending it to Congress, and I wish to be distinctly understood as not admitting the causes of difference to exist to the extent the President seemed to suppose. If it were necessary or proper, I could at once point you to the most plenary proof, that in many instances the militia of Massachusetts did serve under officers of the United States, and that the Governor gave directions to some of the commanders of Divisions on the seacoast to furnish as many men as were desired, to officers commanding the forts of the United States. A difference of opinion existed in 1812, as to the right of calling out troops, but that question was not, and could not have been raised in 1814, for there was an entire concurrence of sentiment, as to the necessity of making defence against the enemy. The reasons for not mustering the troops into the service of the United States at that time, were of a different character, and founded on objections to the mode of organizing them. But I will not dwell on this collateral matter. The President alleges that the claim was referred to Congress, because of a disagreement of opinion upon Constitutional law. The very document in which this reason is assigned, contains a declaration that the services were patriotic and necessary, and that the claim ought to be settled in the same manner as the claims of other States.

It is clear, therefore, that I am right when I say that neither the amount claimed, nor the matters of charge were the cause of this reference to the Legislature. A discrimination between *personal* and other services had not been thought of.

This brings me to consider, secondly, what is the true meaning of the act? Does it provide for a *full* and *final* settlement of the claim, or does it only provide for a settlement in part? The act is in the following words:—

“ SECT. 1. Be it enacted, &c. That the proper accounting officers of the Treasury under the superintendence of the Secretary of War, be, and they hereby are authorised and directed to credit and settle the claims of the State of Massachusetts, against the United States, for the services of her militia during the late war, in the following cases.

“ First, where the militia of said State were called out to repel actual invasion or under a well founded apprehension of invasion—Provided, their numbers were not in undue proportion to the exigency.

“ Second, where they were called out by the authority of the State, and afterwards recognized by the Federal Government, and

“ Thirdly, where they were called out by, and served under the requisition of the President of the United States, or any officer thereof.

“ SECT. 2. Be it enacted, &c. That the sum of four hundred and thirty thousand seven hundred and forty eight dollars and twenty six cents, if so much be necessary, be applied to the foregoing purposes out of any money in the Treasury not otherwise appropriated.”

The question before Congress was not whether a great-

er or less sum should be allowed, nor whether, in any particular service, this thing or that should be paid for, but whether they would relieve the State from the Constitutional objection raised by the Executive of the United States, and they passed the above act for that purpose, directing that the services of the militia should be settled in the several cases therein specified.

That I am correct in this view of the subject is proved by the whole history of the claim; but if the proof were less complete from this source, still I should be sustained by the authority of the Department.

In your communication of the 20th of January last, you remark, "the essential difficulty, and which has involved much, and close examination, is in reference to the class of cases under the first general head (of the act) prescribed. These are most numerous and would present increased embarrassment, but for the opinion possessed that in enacting the law of May 1830, Congress intended that the objections heretofore arising and which are presented in the correspondence of the Secretary of War and Governor of Massachusetts, during the late war were to be *discarded*." And after reciting parts of the correspondence between the Governor and the Secretary of War, in which the latter announces the opinion of the President, that he had no power to allow pay to the troops of Massachusetts for their services, but it would be a matter for the Legislature to settle; you observe, "this ground of difference, the act of Congress removes." Again you add, "in discharging the trust given to me under this act, I have not felt myself called upon to consider the claim in reference to the objections which were originally made, but simply to determine under the provisions of the act, if at the time

those claims arose, and when the militia were called out there was an actual invasion or well founded apprehension of invasion," and also whether "the numbers were in undue proportion to the exigency. To determine these is all I feel myself called upon or required to do."

Thus far it seems to me that every circumstance which has transpired in this affair tends to lead the mind directly to the conclusion, that the act was passed for the sole purpose of removing the Constitutional objection, and of placing the claim of Massachusetts, for all expenses incurred by ordering troops into the service under the circumstances therein prescribed, on the same footing as the claims of other States. If other proof were needed to establish this position, I would invite your attention to the fact, that the act itself is obviously framed with reference to the rules of the Department adopted as far back as 1818, in settling the accounts of other States. The three classes of cases enumerated in the act, I think will be found identical with these pre-existing rules, which circumstance is a pretty decisive proof that Congress meant to give to Massachusetts the same measure of justice, that has been meted out to others.

It is also worthy of remark, that in all the reasonings and movements relative to this claim, in and out of Congress, up to this time, no intention has, to my knowledge, ever manifested itself to adopt a new principle in settling the expenditures occasioned by any body of troops whose service might be allowed to the State of Massachusetts.

But in your communication of the 7th of this month, you appear to maintain that Congress by their act have removed the Constitutional objection from the *personal services only* of the troops. That no misapprehension may exist, I will here state what I understand

by personal service. I understand that in your opinion the monthly pay or wages only of the troops is provided for, and consequently all other expenditures, as for rations, ammunition, fuel, forage, hospital charges, transportation, &c. &c. are excluded. I must beg leave in the most respectful manner to dissent from this opinion, and with your permission will state the reasons which has brought my mind to a different conclusion. This construction is at variance with the object of the Executive in referring the claim to Congress, and with the probable intent of that body in passing the act, unless some good reason can be assigned for this singular discrimination which admits the right of the State to receive the monthly pay of the troops, and denies the right to reimbursement for all other expenditures, however necessary. But what could have been the motive for such a discrimination? On what reasonable basis can it rest? Why should the monthly pay of troops be allowed to the State, and the charges for their rations, fuel, hospital expenses, &c. without which they could not subsist or be useful, be disallowed? no such rule has ever been adopted in the settlement of military accounts, and can it be that Congress by a deliberate act of legislation, meant to impose conditions so offensive and unjust upon the people of these two States? I may safely answer no; for I most solemnly aver my full belief that the thought of such a discrimination never passed over the mind of a member of that body. Pay without subsistence would be an anomaly in military affairs. It would greatly surprise the States of this Union, if told that their militia would be allowed monthly pay or wages, but nothing for food, or shelter, or fuel, or medicine, or nursing. This discrimination is invidious and unjust;

for it excludes charges for public service, such as have been allowed to other States by the unanimous consent of the nation, and against which we have never heard any objection, except those which have been urged against the whole claim. I am sensible that we must take the act as we find it; but if it is to receive this construction, I am confident Congress have not only failed to express their meaning, but their language will be made to utterly pervert their intention. It would seem to me, therefore, that an interpretation so opposed by reason, and so against the obvious sense of the Legislature, ought not to be adopted.

But it appears to me these views are confirmed by looking into the act, for I can find nothing there which calls for this limited construction. It provides for the services of the Militia of the State during the late war in the cases enumerated. What is Militia? Not men alone, for every man is not of the Militia. The term has a broader signification; it implies not only men, but men furnished with the equipage and munitions of war; and when we speak of paying the Militia, we mean something more than the monthly wages of men,—we mean to include the expenses of a body of men in the public service, provided with whatever is necessary to constitute a Militia or armed force.

The act provides for the payment of the claims of the State for the services of her *Militia*. What is military service? In common parlance and in legislation, it is a phrase well understood, and in such common and necessary use that we should find it difficult to make ourselves intelligible without it.

Appropriations have been made for many years for “the Military Service,” so denominated in the acts.

These acts contain the annual allowances to all the departments of the army, to the Indian bureau, to pensioners of all classes, for fortifications, arsenals, &c. &c., and it is all called *Military Service*. We speak also of the Naval service, and the public service, and mean to use the phrases in a very comprehensive sense, reaching much beyond the mere employment or mere pay of men. The object provided for by the act is the Militia. The Militia is an armed force with its equipment, and expenditures incurred for such a body are expenditures upon objects properly denominated Military or Militia Service, within the ordinary acceptation and meaning of the phrase. If we take into consideration the design of passing the act, it seems to me we can arrive at no other conclusion; for it cannot be presumed that Congress, without any assignable motive, would make an unjust and offensive discrimination between the troops of Massachusetts and the troops of other States, nor can it be presumed they meant to provide for the allowance of monthly wages, and to exclude rations, fuel, forage, hospital charges, and other expenses which must be incurred, and which have been uniformly allowed. The term *services* was not intended to be used in that narrow sense, but to include the disbursements occasioned by calling out the Militia; to be adjusted according to the established rules in settling such accounts.

It is obvious, also, that the appropriation itself furnishes a strong argument in support of this reasoning. The sum appropriated is the exact balance reported by the accounting officer to be due. This balance is made up of the usual elements of military service, consisting of monthly pay, wages, rations, fuel, transportation, forage, hospital charges, &c. &c.

If Congress intended to provide for the payment of monthly wages only, it is singular that this balance precisely, composed as it is of almost every expense belonging to the service, should be appropriated for that purpose.

In looking at the report of the Auditor, we cannot fail to notice the fact, that the claim was never examined or dissected with reference to personal service. This part of it was never brought under separate consideration, nor was it ever thought by any one to be privileged above other portions.

The act itself is far from favoring such an idea, for its main provisions, as I have already observed, are substantially a transcript of the rules of the Department, which have never been applied in this manner. It is singular, if Congress intended to provide for this portion of the claim only, that they should pass an act from which that intention can be gathered only by giving an unusual and unprecedented meaning to the word *services*.

I would remark, also, that the balance found by the Auditor to be due, as I have stated, has been allowed and paid over to the claimants. It covered part of many charges which are admitted to be unobjectionable, but have been suspended because the evidence filed in their support was adjudged to be informal or insufficient. These objections, I have no doubt, can at once be removed, and then these items will stand on the same footing as those which have been recognised as allowable. I ought also to add, that a large sum for monthly pay, forage, fuel, &c. is suspended in this manner; and I have noticed some charges as marked suspended, merely to ascertain the distances travelled by troops. It follows, therefore, if the investigation stops

here, a portion of the personal services will remain unsettled.

The insufficiency of the appropriation cannot form any solid objection to settling the claim; for Congress cannot well provide for it until the amount is known. As I view the matter, the act removes the constitutional objection from all disbursements and expenditures on account of troops called into the service under the circumstances specified in it, and the appropriation was limited to the sum mentioned, because that sum had then been found to be satisfactorily vouched.

I will, with a few additional remarks, take my leave of the subject for the present. This is a question of much interest to the people of Massachusetts and Maine. They have been patient petitioners to the government for many years, suing for the same measure of justice which had been promptly extended to other States. That they turned out with alacrity, and performed great and patriotic services in defence of the country, has always been conceded. That they advanced from their own pockets the funds to meet the expenditures occasioned by these services is admitted. When the act of last Congress passed, they congratulated themselves upon the prospect of a speedy, fair and honorable adjustment; and I cannot doubt, if the settlement is arrested here, intelligence of such a step will be received with bitter disappointment.

I have now communicated my views with freedom and frankness, but I trust in a respectful manner, and I assure you with entire sincerity that I feel myself justified in placing the greatest reliance on your candor in deciding this important question.

With great respect, your obedient servant,

J. DAVIS.

(H)

*J. H. Eaton to J. Davis.*Department of War, }
March 15th, 1831. }

SIR,—Your letter of the 8th was not received by me until yesterday. I assure you it would afford me pleasure to be able to adopt your reasoning and to proceed with an examination of the claims of your State, which have so long been deferred ; but candor prompts me to say that after a patient examination of all you have suggested, my mind is not brought to any conclusion different from what was communicated to you in my last letter.

Why have the claims of the State of Massachusetts been so long postponed ? Why is it, while other States of this Union, for services of their militia during the war, have long since been heard and their demands adjusted, that for 16 years those of the State of Massachusetts have lain over, unacted upon ? The answer is to be found in the objections which constantly have been urged, that the troops of the State, because not placed under the control of the General Government, nor made subject to its command, were not liable to receive compensation from that quarter. In 1814, the Secretary of War distinctly assumes this ground, and in his letter to the Governor of Massachusetts remarks, that for this reason, the militia of the State must look

only to the State, and not to the General Government, for compensation for their services.

Upon this ground the objection rested, was met, and argued on the one side and on the other, from the termination of the war until 1830. In that year, for the first time, Congress was induced to legislate, and did legislate. To the particulars of that act I need not refer, inasmuch as they are altogether familiar to you.

I may be permitted to remark, that then for the first time was the objection, which had been previous urged, surrendered. But why or wherefore surrendered is not for me to inquire, nor is it necessary, in the examination before me, that I should. It may be that it arose from a conviction the previous course was wrong; or it may have been the result of liberality and good feeling, and a desire to terminate a matter, which, being retained, could only serve to keep alive unkind and unpleasant feeling on the part of a sister State, towards the government of the United States. Be the causes which led to the passing of the act of 1830 what they may, they affect not the question now under consideration, and hence need not be further noticed.

But what are the provisions of the act of May, 1830, under which are exclusively derived my powers to sit in this case in the character of Chancellor? I repeat that the act threw off the old contested point which so long had been battled, as to the troops not being in the service of the United States; and the only matters referred to me for decision were, whether there was an invasion, or reasonable cause to apprehend it, and if so, then whether the numbers called into service were in undue proportion to the exigency; but with this express limitation, that whatever I might think, under the rules

imposed on the reference, the allowance to be made should not exceed a given amount. Now, in making my award, it occurs to me to be very immaterial whether I had looked to the personal *service of the Militia* (their pay I mean), to arms and munitions furnished, to clothes and rations claimed because not supplied, or to any other miscellaneous items of charge. These could make no difference: if by admitting them I had exceeded the amount of the appropriation, no payment could be made.

But in looking to the act of 1830, my construction of it differs from your own. I have said, and I repeat, that it provides merely for the adjustment of the personal services of the militia, or in other words, the pay which it was alleged they were entitled to, in consequence of these services. You ask of what benefit is this in a time of war, unless subsistence is also afforded? Most readily do I grant you, that mere personal service is of little avail, if the soldier be not clothed, armed and fed. The policy of every government will suggest the propriety of furnishing these, and whatever else may be necessary to give efficiency to its armies, rather than leave their procurement to the uncertain exertions of the troops. But certainly it will not be pretended that a government may not throw off the exercise of this policy, and leave her soldiers to their pay merely, without an undertaking to supply either arms, food or clothing. Every man is bound to defend his country. The principle is indisputable. But what compensation he may claim for doing this, is matter of contract abiding in the discretion of the government, to be exercised before the services are performed.

I intend not to discuss the original question involved

in this enquiry farther than may be necessary to make myself understood, and I had indulged a hope that my last letter was so framed as to draw your attention understandingly to the precise difficulty which I felt to exist, and which I then sought to explain. It was however written hastily, and at a time when my health and the fatigues of the Office were such as that most probably, (for I have no copy before me,) my expressions may not have been in precise correspondence with my intentions.

I intended to say, that the claim of Massachusetts had uniformly been resisted on the ground assumed in 1814 by the Secretary of War, because the Governor of the State had refused to place the militia in the service of the United States, or to make them subject to the command of officers of the United States, that Congress in their legislation on the subject in 1830 removed this objection and directed the Secretary of War to allow the claim, on account of the services of the militia with a limitation as to the amount. Now if the troops could not be paid, and were not paid during 15 years for their personal services, because of the objections stated, so neither could they be compensated for rations, arms, munitions, clothes, &c. inasmuch as the right to the latter could be but a mere consequence of the admission of the former. The whole being thus in doubt and dispute, legislation took place, and directions were given that a settlement should be made. For what? For the personal service of the Militia only; and not for any other item of charge which may be the mere sequiter of the first. Congress has removed the objection in the one case; but not in the other.

Now suppose in all this, there is mistake and error,

where is the wrong done? In what does the injury consist? If I overstep the authority conceded to me, I am subject to the imputation of having arrogated to myself powers not intended to be given, an assumption, of which Congress, (and rightfully too,) would be the first to complain.

But on the other hand, the matter rests as before, nothing changed, and in nothing effected to the prejudice of the claim.

The same justice abides in Congress, and the same good feeling will prompt, to do towards a Sister State, as others could be done by. Were I to decide every item which is claimed, of what avail would it be? No payment could be made because no funds for such a purpose have been placed at my disposal. It would be a mere extra judicial action, upon which an appeal to Congress might be made, and which when made, might receive for answer something like this. The Secretary was neither authorized nor required to give an opinion upon this subject, and we can regard it in no other light, than merely as an opinion unasked for, and certainly not authorized or requested to be given.

You enquire, how can this matter fairly and understandingly be brought to the consideration of Congress until the amount authorized to be allowed (under the usage settled as to other States,) can be ascertained. The answer to this is I think not difficult. The report of the Auditor in January 1823 exhibits the various amounts claimed by your State under the general heads that they were presented. Under the head Miscellaneous items, which are those now immediately under discussion, and all of which have been declared inadmissible is contained an amount of \$240,759 59 cents.

There are also in the settlement recently made, and which my report will show, various other items, under the heads of alarms, Guards, and executive calls, which have been disallowed, the whole amounted to \$360,000. These will make up the items for the future consideration of Congress. Infinitely more competent than I am will they be, to examine and to decide upon the general and particular merits of those disallowances, and with a freedom beyond anything that I can feel myself authorized to exercise, may admit them.

In conclusion I must entreat you to extend to me a reasonable credit for good feeling, for comity, and a disposition to meet every suggestion you make, with the respect that is due to the frank, open and courteous deportment, which has characterized our intercourse, written and verbal, throughout this intricate examination. The zeal and industry displayed by you in the execution of the important trust confided by your State, will prove to her abundantly that whatever failure has arisen it is not attributable to a want of vigilance and attention on the part of him to whom their trusts have been confided. Did I feel myself clothed with power to act, cheerfully would I take up the various items of the account, and with patience go with you into an examination, to the extent your time and leisure would permit. But feeling myself convinced that to do so, is not, nor was intended as a privilege to be given, by the act of 1830. I cannot consent to become a usurper of authority. Public functionaries must be governed by law. Discretion should only be resorted to, when some previous legislation authorizes its exercise.

With great respect, J. H. EATON.

John Davis, Esq. Agent for the Claims of Massachusetts.

(I)

J. Davis to J. H. Eaton.

Worcester, March 28, 1831.

SIR,—Your favor of the 15th was received on the evening of that day, and having determined to leave the City of Washington the next morning, various indispensable engagements left me no time either to acknowledge it personally or in writing. This I intended to have done before now, but more pressing duties as well as indifferent health have hitherto occasioned a postponement.

I have, however, but little to add to what has already been presented for your consideration. I most sincerely regret the decision you felt it your duty to make in giving construction to the authority confided to you, as it throws us back upon ground which will probably occasion further delay in an adjustment which ought long since to have been closed. When Congress passed the act directing the settlement of the claim, it is well known it had previously undergone a very strict examination by the third Auditor, under instructions from the House of Representatives and that he had reported the sum of \$430,748,26 as due to the State, upon the principles adopted in settling the claims of other States. The residue of this sum, after deducting \$11,000, which was advanced some years ago, has been adjudged to be due under the provisions of the act, and has been paid. The amount thus found due and paid will on recurrence

to the adjustment made, by the auditor, be found to consist of almost every kind of charge claimed by the State. It is in truth precisely similar to much of the residue, which is suspended, and which consists of charges growing out of the services of the same troops. For example, the items for forage, servants, travel, fuel, rations, &c. of the staff of one regiment is allowed and paid, while like charges for the staff of another regiment in the same corps is disallowed, because the certificate at the bottom of the pay-roll is not in the exact phraseology required by the army Regulations.

Again in auditing charges, many items which are acknowledged to be such as are usually allowed, have been suspended, because the rule of the Department early adopted in such settlements, requires that they should be submitted to the Secretary of War for his approbation.

I recapitulate these facts, to prove what seems to me to be firmly established, that the principles which have led to the allowances, which have been made, if followed out, would cover a large portion of what remains to be satisfied, for the payment made is for wages, fuel hospital charges, forage, servants, &c. and much of the residue of the demand is for like charges, growing out of the same service, and therefore involving no new objections.

I beg leave also again to suggest that the act contains two main provisions, which do not necessarily depend on each other. The first directs the claims in certain cases to be settled and credited to the State under the discretion of the Secretary of War. This seems to me to repose in the Secretary a complete power to settle all the charges embraced by the terms of the act, so far at least as to ascertain what is due.

The second provision is an appropriation designed to carry into beneficial effect the first. But at the time it was made, the amount needed to meet the result, which might ensue from the examination authorized and required by the act, was unknown and being unknown, it was impossible to make an appropriation providing with exactness for it. Congress did not therefore fix upon the sum named in the act for the purpose of passing judgement that so much and no more was due. There is nothing in the language which authorizes such an inference. The settlement was directed to be made. The amount which would fall to the State by that settlement was unknown, but it became necessary to make some provision for it. The auditor had declared the sum named to be satisfactorily vouched and this was inserted in the act.

I infer from all these circumstances and considerations that Congress intended all the claim falling within the principles of the act should be fully settled, and if the amount should be found to exceed the appropriation, the excess was to stand as an unquestioned demand upon the United States.

Having, however, stated my views much in detail, on all these points, in my former communications, I will not press them further, but ask leave to observe that it will give great satisfaction to the States interested to resume at any moment the settlement, should you hereafter consider such step within the scope of your authority.

In closing this communication, I take great pleasure in acknowledging the courtesy and frankness, which has at all times characterized the discharge of the la-

borious duties which have devolved upon you in the adjustment of these claims. And while I would not press my own views with unbecoming zeal, I cheerfully accord to yours all the respect which is felt for an honest difference of opinion.

I am, with great respect,

Your Obedient Servant,

J. DAVIS.

Hon. J. H. Eaton.

Extract from a Communication to Governor Lincoln, referred to in the Report.

Lieutenant Colonel Towne commanded a regiment of Light Infantry at South Boston, and the following facts are taken from the Pay Roll of the Staff of that regiment, and will show the general character of the deductions made by the Auditor, or other accounting officers—
The roll as allowed by the State foots at - - - \$1329,24

The whole number of persons is thirteen; the highest in rank a Lieutenant Colonel, the lowest a fife major:—the highest pay allowed by the State \$75 a month,—the lowest \$11:—the time begins on different days from the 13th of Sept. 1814, to the 20th of the same month, and the roll is made up on the first day of November following.

Deductions.

1. Over payments - - - - - \$57,43

Towne was a Lieutenant Colonel

Amount claimed, brought forward, \$1329,24

Commandant, but the Commander of a regiment. The United States allow a Colonel \$75 a month, as the commander of a regiment:—to a Lieutenant Colonel but \$60, being a battalion officer. The State allowed Towne \$75, because by our law he performed all the duties, and had all the responsibilities of a Colonel in the United States.—The pay of every commander of a regiment, is reduced in the same way, for we had no Colonels in the service. The pay of all the persons on the roll is reduced, some from \$5 to \$6—others only some 30 cents, but all the deduction except from Towne's charge, arises from the different methods of averaging the daily pay upon the time, in the months, in which the service was rendered.—

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|----|---|-----------|-------|
| 2. | Travelling expenses, noted as <i>inadmissible</i> | - - - - - | 49,00 |
| 3. | Forage <i>to and from</i> camp, noted as <i>inadmissible</i> | - - - - - | 18,00 |
| 4. | Payment for clothing to non-commissioned officers, <i>inadmissible</i> | - - | 36,07 |
| 5. | The charge for rooms, or quarters is contrary to the regulations of the army, and therefore must have the | | |



A 000 653 507 4

Amount claimed, brought forward \$1329,24

special sanction of the Secretary of
War, before it can be allowed - - 20,90

6. *Forage while in camp*, must also be
sanctioned by the Secretary as the
certificate of Colonel Towne is in-
formal - - - - - 177,00

7. The charge for servants is in like
condition, for it does not appear that
they were actually *mustered* into the
service - - - - - 165,90

8. The charges for transportation of
baggage and for rations *to* camp and
the charges of pay *to* and *from* camp
are *suspended* until the *distance* which
each person travelled shall be ascer-
tained, to wit,—Baggage - - - 44,22
Rations - - - - 16,24
Pay - - - - - 77,15 661,91

Amount actually allowed by the Auditor. \$667,33

It is apparent from the foregoing that the Secretary
of War, in the exercise of his discretionary power would
at once remove a portion of the objections, for he must
know that an officer cannot well get to camp without
travelling, nor can he perform the active duties required
of him in the field without horses, servants and forage.
This paper will subserve the purpose for which it was
designed, as it will show the character of the allowances
made, as well as of the charges rejected, and it will, I
think, carry with it the conviction that the same princi-
ples which admitted the one to be a just claim, must

also admit the greater part of the other to be equally just. When the reference was made to this document, it was supposed an entire copy was at hand, but it turns out that I am able to furnish only the objections made to it by the accounting officers. This document and all others were audited under the Resolution of the House of Representatives of the 15th of December, 1826, as has been already stated when no agent was present either to make explanations, to procure additional evidence or to obtain the sanction of the Secretary. It was to remove such objections as these that I proposed to the Secretary of War, to go into a revision and examination of the account, that we might ascertain what portion of the balance was due to us upon the principles adopted, in allowing what has been paid, but he declined acceding to the proposition.